

## DEPARTMENT OF STATE REVENUE

01-20180801.LOF

**Letter of Findings Number: 01-20180801  
Individual Income Tax  
For Tax Year 2013**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### HOLDING

Individuals did not provide any new supporting documentation for their protest. Therefore, individuals did not meet their burden of proving the proposed assessments wrong.

### ISSUE

#### I. Individual Income Tax–Assessment.

**Authority:** IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-8.1-5-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Wendt LLP v. Indiana Dept. of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); [45 IAC 3.1-1-1](#).

Taxpayers protest the assessment of individual income tax.

### STATEMENT OF FACTS

Taxpayers are a married couple who reside in Indiana. As the result of a review of its records regarding Taxpayers' individual income tax returns, the Indiana Department of Revenue ("Department") determined that Taxpayers had made assorted estimated tax payments but had not timely filed income tax returns for 2010, 2011, 2012, and 2013. Taxpayers then filed returns for 2010-13 in which they claimed overpayments on their returns for 2010, 2011, and 2012. Taxpayers requested that the claimed overpayments be applied to each subsequent year's income tax return. The Department determined that the claimed overpayments were overstated. The result of that determination was that each year's purported overpayment was denied by the Department. Thus, there were no amounts of purported overpayments available to be applied to each subsequent year. The result of all of this was that Taxpayers owed Indiana individual income tax for 2013. The Department therefore issued a proposed assessment for individual income tax, penalty, and interest for 2013.

Taxpayers protested all of the Department's denials for 2010-12, and also protested the proposed assessment for 2013. On the protest submission form (State Form 56317), Taxpayers chose the fast track settlement option without an administrative hearing or final determination. After review of Taxpayers' protest letter, it became clear that Taxpayers had not made a settlement offer. Further, there was insufficient information in the protest materials sent in by Taxpayers to determine if any settlement was warranted. Therefore, in conjunction with Taxpayers' separate protest regarding the 2010-12 denials, the Department conducted a hearing to develop Taxpayers' position for its protests. This Letter of Findings results. Further facts will be supplied as required.

#### I. Individual Income Tax–Assessment.

### DISCUSSION

Taxpayers protest the proposed assessment of individual income tax for 2013. The Department determined that Taxpayers had incorrectly filed their 2010-13 income tax returns which resulted in an assessment of individual income tax for 2013. Taxpayers protest that they had made estimated tax payments for these years and that each year had overpayments which should be applied to the following year's income tax liabilities. Taxpayers also state that the returns had been filed timely and did not know why the Department's records did not show receipt of those returns until 2017-18. In support of their protest, Taxpayers provided copies of the returns for the tax years. Taxpayers provided no further analysis or documentation.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . .[courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

IC § 6-3-2-1(a) states:

(a) Each taxable year, a tax at the following rate of adjusted gross income is imposed upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person:

(1) *For taxable years beginning before January 1, 2015, three and four-tenths percent (3.4[percent]).*

(2) *For taxable years beginning after December 31, 2014, and before January 1, 2017, three and three-tenths percent (3.3[percent]).*

(3) *For taxable years beginning after December 31, 2016, three and twenty-three hundredths percent (3.23[percent]).*

*(Emphasis added).*

IC § 6-3-1-3.5 defines adjusted gross income as:

When used in this article, the term "adjusted gross income" shall mean the following:

(a) *In the case of all individuals, "adjusted gross income" (as defined in Section 62 of the Internal Revenue Code), modified as follows:*

*....*

*(Emphasis added).*

[45 IAC 3.1-1-1](#) further describes adjusted gross income:

Adjusted Gross Income for Individuals Defined. For individuals, "Adjusted Gross Income" is "Adjusted Gross Income" as defined in Internal Revenue Code § 62 modified as follows:

(1) Begin with gross income as defined in section 61 of the Internal Revenue Code.

(2) Subtract any deductions allowed by section 62 of the Internal Revenue Code.

(3) Make all modifications required by [IC 6-3-1-3.5\(a\)](#).

Under IC § 6-8.1-5-1(b):

*If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to [IC 6-8.1-10](#) concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.*  
*(Emphasis added).*

In this case, Taxpayers have not provided any substantive analysis or documentation in support of their bare protest of the assessment for 2013. Rather, Taxpayers have only provided the returns they filed for 2010-13. The Department already had access to these returns. Taxpayers have not presented a sufficiently developed argument for the Department to address. See *Wendt LLP v. Indiana Dept. of State Revenue*, 977 N.E.2d 480, 485 n.9, (Ind. Tax Ct. 2012) (stating in a footnote parenthetical "that poorly developed and non-cogent arguments are subject to waiver" by the Indiana Tax Court) (*citing Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax. Ct. 2010)). Therefore, Taxpayers have failed to meet the requirement of proving the proposed assessments wrong, as provided by IC § 6-8.1-5-1(c).

## FINDING

Taxpayers' protest is denied.

June 25, 2018

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An [html](#) version of this document.